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5 IN THE UNITED STATES DISTRICT COURT
6
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES OF AMERICA,

No. 08-00390 CW

9 Plaintiff,

10 v.
11 MABELLE DANN,
12 Defendant.

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15 ORDER DENYING
16 DEFENDANT'S
17 MOTION TO CORRECT
18 SENTENCE
19 (Docket No. 120)

20 On April 22, 2010, the Court sentenced Defendant Mabelle Dann
21 to sixty months imprisonment. In addition, the Court ordered
22 Defendant to pay \$123,740.34 in restitution. As part of the
23 restitution order, the Court ordered that "any payments made by
24 [Defendant's ex-husband Robert] Crabbe toward back child support
25 that he owes shall be signed over to the victim as payment towards
26 restitution." Defendant moves to correct the Court's order to
27 exclude these back child support payments. The government opposes
28 the motion. Having considered all of the papers filed by the
parties, the Court DENIES Defendant's motion.

DISCUSSION

29 Federal Rule of Criminal Procedure 35(a) provides that, within
30 seven days after sentencing, "the court may correct a sentence that
31 resulted from arithmetical, technical, or other clear error."

1 Defendant argues that, under California law, child support
2 arrearages are owed to the child, not the parent, and accordingly
3 the Court may not order Defendant to assign child support
4 arrearages to the victim because the money is not hers to assign.

5 California law is not clear on this issue. In Williams v.
6 Williams, 8 Cal. App. 3d 636, 640 (1970), the California Court of
7 Appeal held that child support arrearages could not be offset by a
8 debt owed by the custodial parent to the non-custodial parent. The
9 court held that child support, like alimony, is not an "ordinary
10 debt" but rather a court-imposed obligation to provide for one's
11 child. Id. at 639. Furthermore, the court recognized that an
12 offset was not available because the child support obligation was
13 due to the child, not to the non-custodial parent. Id. at 640.
14 "If [child support] be considered a debt it is, in essence, a debt
15 owing to the child . . . the parent, to whom such support is paid,
16 is but a mere conduit for the disbursement of the support." Id.

17 In In re Marriage of Utigard, 126 Cal. App. 3d 133 (1981), the
18 California Court of Appeal held that adult children could not sue
19 as beneficiaries of the back child support owed to their mother.
20 The court held that "where the purpose of securing the arrearages
21 is reimbursement of a parent for having supported the children, the
22 beneficiary is the parent and not the child." Id. at 142. The
23 court also noted that "courts have presumed that where the action
24 is for accrued child support, it is one for reimbursement to the
25 'custodial' parent, notwithstanding the fact that the award itself
26 may have been for the benefit of the child." Id. at 143 (emphasis
27 in original). However, the court also stated that "we do not reach
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1 the question under what conditions the children might be deemed the
2 beneficiaries of arrearages in child support." Id.

3 In In re Marriage of Damico, 7 Cal. 4th 673, 685 (1994), the
4 California Supreme Court held that a custodial parent could be
5 estopped from pursuing a suit for child support arrearages if the
6 parent deliberately concealed the children from the non-custodial
7 parent until after the children reached the age of majority. In
8 such a case, the Court determined that the custodial parent was
9 "seeking payment of the arrearages to herself, not to the child."
10 Id. at 684. The Court reasoned that in such circumstances, "[t]he
11 harm [the] mother did to the child by denying [his] father's
12 companionship and financial support should not now entitle her to
13 arrearages, many years later, that can no longer benefit the
14 child." Id. at 685. In so holding, the Court reserved the
15 question of whether concealment that ended before the child reached
16 the age of majority might mandate a different result, because in
17 that circumstance the child "might yet benefit from payment of the
18 arrearage." Id.

19 Finally, in In re Marriage of Comer, 14 Cal. 4th 504 (1996),
20 the California Supreme Court addressed the issue left open in
21 Damico, and held that, when the concealment ended before the
22 children reached the age of majority, estoppel would not apply
23 because the minor children "might still benefit from the father's
24 payment of child support arrearages." Id. at 517. The court
25 emphasized that "[t]he single most important consideration in an
26 action for child support is the need of the child." Id. (citations
27 omitted). Accordingly, because the children were still minors and
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1 required the support of their parents, requiring the non-custodial
2 parent to pay arrearages to the custodial parent despite the
3 custodial parent's wrongdoing was not unjust. Id. at 518.

4 Although no authority directly addresses the issue presented
5 in this motion, case law appears to support the view that child
6 support in the form of arrearages is a debt owed to the children if
7 the children stand to benefit from the payments. The debt is owed
8 to the custodial parent when the children will not benefit from the
9 payment of the arrearages.

10 Here, Defendant will be incarcerated for a period of years.
11 Child support arrearages paid to her will not benefit her children
12 during her period of incarceration. Accordingly, the Court will
13 not modify its restitution order at this time. If child support
14 arrearages are received by Defendant at a time when she has custody
15 of the children and needs the arrearages to support them, she may
16 move for a modification of the restitution order, setting out her
17 financial circumstances and how the money will be used for the
18 benefit of her children. Similarly, if Defendant receives
19 arrearages at a time when someone other than herself or Crabbe has
20 custody of the children, and the money is needed to support the
21 children, she can move to modify the restitution order so that she
22 is allowed to sign over the arrearages to the guardian rather than
23 to the victim. During the time these child support arrearages were
24 accruing, Defendant and her children were receiving the benefit of
25 unpaid childcare services from the victim. It is equitable that
26 these arrearages be paid over, although belatedly, to the victim.

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CONCLUSION

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For the foregoing reasons, Defendant's motion is DENIED.

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(Docket No. 120).

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IT IS SO ORDERED.

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Dated: 07/22/10

Claudia wilken

CLAUDIA WILKEN
United States District Judge

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